

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Big River Trading Company,
Petitioner-Appellant,

v.

Clayton County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-22-0251
Parcel No. 30-17-278-001

On April 11, 2012, the above captioned appeal came on for hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant Big River Trading Company was represented by Ron Fisher, an owner. County Attorney Alan T. Heavens represented the Clayton County Board of Review. The Appeal Board having reviewed the record, heard the testimony, and being fully advised, finds:

Findings of Fact

Big River Trading Company (Big River) is the owner of a commercial property located at 3 Goethe Street, Guttenberg, Iowa. The property is a two-story structure built in 1900 and extensively remodeled in 2009. After remodeling, its effective age was changed to 2008 on the property record card. It has 3020 square feet of gross building area. The property has a full, unfinished basement with a dirt floor. The property also has a 168 square-foot, upper deck; a 50 square-foot patio; and a 135 square-foot open porch. The main level of the building is designed for commercial/office use. The second level of the building is designed for residential use. The site is 0.037 acres. The property is listed on the National Registry of Historic Places.

Big River protested to the Clayton County Board of Review regarding the 2011 assessment of \$196,990, which was allocated as: \$8650 in land value and \$188,340 in improvement value. It claimed

that the assessment was not equitable as compared with the assessments of other like property under Iowa Code section 441.37(1)(a). It asserts a fair and equitable assessment is \$105,290 allocated as \$8650 in land value and \$96,640 in improvement value.

The Board of Review granted the protest in part, reducing the total assessment to \$174,991, allocated \$8650 in land value and \$166,341 in improvement value. The property record shows the Board also changed the effective age from 2008 to 1900 (111 years).

Big River then appealed to this Board reasserting its claim.

On its protest letter dated May 3, 2011, Michael Schuster an attorney with Schuster and Mick, on behalf of Big River, identified the following properties as equity comparables:

	Assessed at:
506 South River Park Drive, Guttenberg	\$96,692
418 South River Park Drive, Guttenberg	\$78,972
508 South River Park Drive, Guttenberg	\$134,722
221 Edgar Street, Marquette	\$107,569
316 South River Park Drive, Guttenberg	\$85,151
400 South River Park Drive, Guttenberg	\$83,534
404 South River Park Drive, Guttenberg	\$52,624
7 Schiller Street, Guttenberg	\$106,171

We note the assessed values provided by Big River for 506, 418, and 508 South River Park Drive are the 2010 total assessments. It is unclear what the reported assessed value for 221 Edgar Street represents as it is neither the 2010 or 2011 assessment based on the property record card. The remaining four properties have the 2011 total assessments reported.

On May 24, 2011, Schuster submitted a second letter and spread-sheet (Exhibit 9) further describing and analyzing the eight properties Big River considers as equity comparables. It asserts all of the properties are similar two-story buildings where the street (main) level is used for commercial purposes and the second level is used for residential rental purposes. The subject building is classified commercial. It further asserts the assessments of the properties improvements range from \$44,653 to

\$124,758 compared to the subject improvement assessment of \$191,264.¹ And that the improvement assessment per square foot of the comparables ranged from \$40.28 to \$85.33, compared to the subject's improvements being assessed at \$126.66 per square foot.

We note several flaws with this analysis. First, as already mentioned, some of the data being analyzed uses the 2010 assessment data rather than the 2011 assessment data. Secondly, the assessed value per square foot is not based on the total gross building area, but rather only the base foot print of each property. Lastly, only two of the eight properties have sold recently and Big River did not identify the market value for any of the properties which were not sales. Of the two properties that have sold, it is unclear if the sale prices represent market value. We note that 221 Edgar Street sold in January 2010 for \$80,000 and then in May 2010 for \$74,500. There is no explanation for why the property sold twice in a short period of time, or why it sold for slightly less on the second sale. The property located at 7 Schiller Street sold in September 2010 for \$115,000 to the Pensco Trust. We note the price paid in 2010 is the same price paid for the property in June 2001. A determination of market value is necessary to show inequity. Therefore, we give this data and analysis no consideration because it is either improperly or incompletely analyzed for a January 1, 2011 equity claim.

Big River also submitted Exhibit 10, identifying seven additional "two-story commercial structures with upstairs apartment/s." This analysis is also based entirely on 2010 assessments. Additionally, this analysis compares the buildings' *taxes* on a per square foot basis. The Board of Review and this Board do not deal with the taxes paid, but rather only the assessed values of properties.

Ron Fisher, an owner of Big River, testified regarding the condition of the subject property and the evidence it submitted. Fisher acknowledged the subject property was purchased by Big River in September 2008 for \$79,000. After purchase the subject was completely renovated with total costs of roughly \$220,000. The list of renovations is extensive. A partial list of renovations includes new

¹ This is the 2010 assessment for the subject improvements.

metal roof, new heat/air units and duct work, installation of utility meters to upstairs and downstairs units, added insulation, new windows, and refinished or new flooring throughout. The record indicates Broker Gary K. Willman of "Rightaway Realty," Guttenberg, at one point, had list price for the subject property of \$285,000, as complete. Fisher testified the property is currently listed for sale with a list price of \$268,750; however, there have been no offers to buy the property. Fisher ultimately asserts that the value of the subject property cannot be determined until there is a willing buyer.

The subject's second floor apartment unit is currently rented for \$450 with the tenant paying utilities. However, we do not consider the current rent relevant. Both the upstairs residential unit and the downstairs commercial space were vacant as of the January 1, 2011 assessment date.

Fisher contends the best comparable is "Doug's Steakhouse" located at 7 Schiller Street. He stated this property has also had renovation yet is assessed for only \$106,171. However, he also acknowledged that to his knowledge the renovations did not begin until after it was purchased, in late 2010 or throughout 2011. Doug's Steakhouse was purchased in September 2010 for \$115,000.

Clayton County Assessor Andy Loans testified the renovations to Doug's Steakhouse occurred in 2011, so the January 1, 2011, assessment did not reflect the renovations. He also testified that prior to the recent renovations the entire building was heated only by a space heater. The updating included adding heat to the main level, but the second level remains unheated. He also stated the 2011 renovation to Doug's Steakhouse was throughout the main level; however, it was not as extensive as renovations done to the subject property. And the second level was not updated. Lastly, Loans testified the recent renovations to Doug's Steakhouse have been "picked up" by his office and the January 1, 2012, assessment will reflect the updates. The Clayton Board of Review asserts the comparison of Doug's Steakhouse to the subject property for the January 1, 2011, assessment is not reasonable because of the significant differences in conditions.

The Board of Review did not provide any new evidence.

Based on the foregoing, we find insufficient evidence has been provided to demonstrate the subject property is inequitably assessed.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shriver*, 257 Iowa 575, 133 N.W.2d 709 (1965). The six criteria include evidence showing


“(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties. (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination.”


Id. at 579-580. The gist of this test is the ratio difference between assessment and market value, even though Iowa law now requires assessments to be 100% of market value. § 441.21(1).

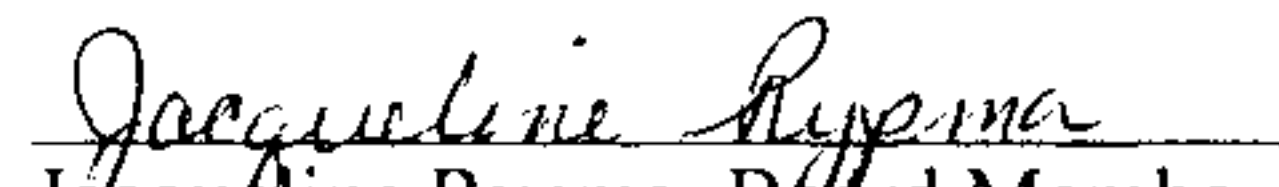
Big River provided properties it considered as equity comparables. However, the year of the assessments were inconsistent; the quality/condition of the properties were not known to be similar to the subject property which has had extensive renovation; and market values were not determined in order to properly develop a ratio analysis.

THE APPEAL BOARD ORDERS the assessment of Big River Trading Company's property located at 3 Goethe Street, Guttenberg, Iowa, of \$174,991, as of January 1, 2011, set by the Clayton County Board of Review, is affirmed.

Dated this 31 day of May, 2012.


Karen Oberman, Presiding Officer


Richard Stradley, Board Chair


Jacqueline Rypma, Board Member

Cc:

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>5-31</u> , 2012	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	